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Eubank Service Station vs. Allen McClure

Chester D. Adams

Fayette Quarterly Court

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FAYETTE QUARTERLY COURT*

EUBANK SERVICE STATION, - - - - Plaintiff,

VS. OPINION

ALLEN MCCLURE, - - - - Defendant.

This case is submitted to the Court on demurrer of the defendant to the second paragraph of the plaintiff's petition. The question is, "Does Section 2739h-1 of the Kentucky Statutes give a dealer a lien for gasoline and oil purchased to operate an automobile?"

Counsel for the defendant have cited a very able opinion rendered by Judge Richard C. Stoll in the case of *Esther Bell Brown v Mrs. H. H. (Margaret C.) Wilson*. This opinion discusses the various lien Statutes of this State and in his usually clear and convincing manner Judge Stoll gives a very logical interpretation of the Statute in question. Counsel for the defendant did not argue that the opinions of the Circuit Court are binding on Quarterly Courts but this Court would be reluctant indeed to adopt a different construction of a Statute from that placed upon it by the Fayette Circuit Court unless the Court of Appeals had in that or some other case reached a different conclusion or unless this Court was firmly convinced that the Circuit Court was in error, especially is this true when the decision in the Circuit Court has been rendered by a jurist of the experience and ability of Judge Stoll.

However, Judge Stoll's opinion in the Brown case was rendered a number of years ago and in so far as the record before me discloses he may have, at a later date, after more extended experience and with a riper legal knowledge and with the insight and legal intuition which comes from long service on the bench, have reached a different conclusion. Also there may have been decisions of the Court of Appeals since that time which, while not exactly in point, might have a tendency to influence Judge Stoll's opinion were he writing an opinion on this question today

* This opinion by Judge Adams, Judge Fayette Quarterly Court, reaching the same conclusion as Judge Stoll supra, as to whether a lien exists on a motor vehicle for oil and gas furnished for its transportation is also printed.

Therefore, without wishing to seem presumptuous, I will endeavor to test Judge Stoll's opinion by the general rules of construction which are to be followed in interpreting a Statute and with such help as can be secured from the decisions of the Court of Appeals of this and other States which serve to throw light upon the question, together with the suggestions contained in the excellent briefs in the case, will try to reach what I consider a true interpretation of the Statute.

The defendant relies almost entirely upon the aforesaid opinion of Judge Stoll. The plaintiff relies largely upon the case of *Willis v Lafayette-Phoenix Garage*, 202 Ky 554, 260 S. W 364. At the outset I was interested to know if the opinion of the Court of Appeals in the latter case was rendered prior or subsequent to the opinion of the Circuit Court in the Brown case.

If the Lafayette-Phoenix case is as much in point as the plaintiff contends it is, if it was rendered after Judge Stoll's opinion it might be argued that it would overrule his opinion. If it had been decided when he rendered his opinion it is fair to assume that he did not regard it as an authority on this question because he does not refer to it.

Construing the omission of the attorneys for the defendant to furnish this information most strongly against them, I will assume that the Lafayette-Phoenix Garage case was decided after Judge Stoll's decision in the Brown case.

A number of cases have been cited which construe other lien statutes but these cases do not shed much light upon the question before us. They are decided from the wording of various statutes and they vary to such an extent that I will not refer to them at this time, except the Statute giving a lien to a person who feeds or grazes horses, which I will refer to later in connection with the Mid-Continental Petroleum Corporation case, cited by the attorney for the plaintiff.

The Lafayette-Phoenix Garage case is concerned primarily with the constitutionality of the automobile lien act and whether it violates the due process section of the United States Constitution. It quotes at length from the New Jersey case of *Crucible Steel Company v. Polack Tyre & Rubber Co.*, 92 N. J. Law. 221, 104 Atlantic 324. In the quotation from said opinion we find these words referring to the New Jersey Motor Lien Statute

"It gives a right of lien for furnishing gasoline, accessories or other supplies for motor vehicles."

Counsel for plaintiff stresses the fact that this opinion says that a lien is given for "*gasoline*" However, upon reading the New Jersey case in full you will find that the Section of the New Jersey Statute which is construed in that case reads in part as follows.

"All persons or corporations engaged in the business of keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles and in connection therewith *stores*, maintains, keeps or repairs any motor vehicles or furnishes gasoline, accessories or other supplies therefor at the request or with the consent of the owner," etc. Comp. Supp., pp. 898, 899, Secs. 7-9.

The word "*gasoline*" is used in the Statute, it being expressly said that the garage owner has a lien for gasoline. The man who wrote the New Jersey Motor Lien law must have been at some time interested in gasoline business because the Statute creates a lien for furnishing "*gasoline, accessories and other supplies.*" He mentioned "*gasoline*" first, so that there could be no doubt that a lien was to be created for the furnishing of this commodity Therefore, the New Jersey case cannot be used as an authority in construing the Kentucky Statutes because so far as gasoline is concerned, nothing is left to construction in the New Jersey Statute, the word "*gasoline*" is written in the Statute.

The plaintiff says that the principle laid down in the Mid-Continental Petroleum case, 225 Ky 501, 9 S. W (2) 229, is in favor of his construction that gasoline is embraced in the Kentucky Statutes in the word "*supplies*" In this case, the Court held that oil and gasoline used in the operation of machinery in digging sewer trenches constitute such "*material*" under the statute as to entitle persons furnishing same to a lien upon the property upon which the trenches are dug. The discussion of the case in the opinion and the quotations from the cases cited in the opinion convince me that the Court allowed the lien in this case upon the theory that the oil and gas used in the machinery, although it did become an integral part of the completed work, helped in a material way to complete the contract and the contract when completed resulted in an improvement to the land. In other words, it seems that materialmen's liens are allowed on the theory stated in *Johnson v. Starrett*, 127 Minn.

138 cited in the Mid-Continental case that "they have contributed to the improvement of the property"

Going back to the lien given by the Kentucky Statute for feed and pasture, plaintiff asks the question, "Is not feed and pasture exactly the same to a horse as gasoline and oil to an automobile?" The answer to this question, in the words of that noted philosopher, Andrew H. Brown, is "Yes and No, partly yes and partly no, mostly no." It is necessary for a horse to be fed to sustain its life and keep the animal in a usable and salable condition. It is necessary to have gasoline in an automobile to give it locomotion. But there is a difference, feed is necessary to the preservation of the horse. It maintains its life, its strength, its speed, in other words, its value. Gasoline gives speed and miles to an automobile and speed and miles depreciate the value of the car. Therefore, there is a vast difference between the two. The more gasoline is furnished for a car the more miles it runs, the more miles a car runs the less valuable it becomes.

I am of the opinion the Statute intended to give a lien only for such services and such accessories and such supplies as become a permanent part of the car and which would have a tendency to add to its value.

It seems to me the Kentucky Motor Lien Statute is very explicit and explains clearly the thing for which it intends to give a lien, namely, "Repairs, work done, accessories or supplies furnished for or on machines." REPAIRS—Webster's New International Dictionary defines repairs "state of being restored, to a sound or good state after decay, waste, injury, etc." Mending a broken wheel, straightening a bumper or taking a dent out of a fender comes under the head of "Repairs" "Work done" would include the mechanical work of putting an accessory on the automobile and would probably include such work as cleaning a carburetor, gasoline line, sparks plug or grinding valves and such other work as may become necessary on the car from use and which are not of a serious enough nature to be classed as repairs and which does not result from some accident and which, therefore, may not be strictly construed as "repairs" ACCESSORIES—According to Webster's accessories are "something additional and subordinate" and as Judge Stoll, in his opinion, said, would include spotlights and other equipment that is placed

on the car after it is purchased and which are not necessary to its operation, but which the owner thinks adds to its convenience.

I also believe that Judge Stoll is correct in his interpretation of "Supplies", that "supplies" does not include either accessories or oil and gasoline but the supplies in the way of new material necessary to repair worn parts, etc.

The Legislature undoubtedly had a right to give a lien upon an automobile for gasoline and oil purchased to be used in the car, but in my opinion they failed to do so and I believe that the most liberal construction placed upon the present Motor Vehicle Lien Law cannot give the garage man a right of lien for gas and oil furnished.

The defendant's demurrer to the second paragraph of the plaintiff's petition is sustained. Counsel will prepare judgment in accordance with this opinion and it is ordered that this opinion be made a part of the record in this case.

CHESTER D. ADAMS,
Judge Fayette Quarterly Court.